

California High Speed Rail Authority

Pesticide Use Impacts

“Will the train create new regulations?”

Agricultural Working Group White Paper

Approved: 7/2/12

BACKGROUND

The California High Speed Rail Authority (CHSRA) proposes to establish a new railway in the San Joaquin [Valley]. The new rail alignment [route] is proposed to be constructed either on existing farmland or adjacent to, where such land lies between urban and commercial properties [parcels] in the Valley. Most, if not all, of the Valley counties through which the railway is proposed to travel have Right-To-Farm Ordinances which make reference to “customary and/or traditional” agricultural practices. The proposed project has raised questions and concerns regarding its impact on many established and customary agricultural practices and consequent potential imposition of new regulatory restrictions. Customary agricultural practices found in the Valley are as varied as is the diversity of agricultural products and commodities produced. The San Joaquin Valley as a natural resource is unique to the state, the nation, and arguably the world by the quality and quantity in the diversity of its agriculture.

The CHSRA has created a “technical” agricultural working group to assist the CHSRA in responding to the more technically oriented questions/concerns that have been asked regarding impacts to agriculture resulting from activities during the construction phase and the daily operation of the High Speed Train. The agricultural working group membership is comprised of members in possession of technical expertise in various categories of agriculture activities and infrastructure. In regards to this paper’s topic [category] of *pesticide regulations*, the County Agricultural Commissioners possess incumbent knowledge and expertise on the subject of pesticide regulation in California.

County Agricultural Commissioners are individuals licensed by the California Department of Food and Agriculture in collaboration with the California Department of Pesticide Regulation in accordance with the California Food and Agricultural Code (FAC), Division 2, Chapter 2, Article 1, Section 2101(a) and 2102(a). In accordance with the FAC, Division 2, Chapter 1, Sections 2001 and 2002, and Article 2, Section 2121, every county in California has a licensed County Agricultural Commissioner appointed [employed] by the respective county Board of Supervisors for the purpose of performing regulatory enforcement activities as authorized, statutorily, in the FAC. Further, Division 2, Chapter 2, Article 8, Section 2281 of the FAC provides the authority to County Agricultural Commissioners for local administration of the enforcement program.

The drafting of this white paper was in collaboration with all of the County Agricultural Commissioners¹ in the San Joaquin Valley, whose counties are included in the proposed route, and the Enforcement Branch of the California Department of Pesticide Regulations. All parties participating in the writing and review of this paper concur with its content.

ISSUE

Concern is expressed regarding the creation of new regulations and resulting restrictions this project will impose on the use of pesticides on farmland in proximity to the High Speed Railway route.

¹ Fresno, Kern, Kings, Madera, San Joaquin, Stanislaus, and Tulare Counties.

DISCUSSION

California growers are accustomed to the regulatory environment within this state and Valley as it relates to their agricultural activities. Concerns are expressed regarding the implications this project might have on the creation of new regulations to the use of pesticides in close proximity to the High Speed Train. This paper is to provide clarification and hopefully answers to the concerns and questions raised regarding pesticide use restrictions.

The agricultural use of pesticides, in general, are subject to regulatory controls based on the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in addition to existing requirements prescribed in California statutes, regulations, and product labels. These laws and [regulations] are in place to provide protection to people and their property, to animals (including wildlife), and the environment.

Pesticide, as defined in the California Food and Agricultural Code: "*includes any spray adjuvant, any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment whatsoever.*"

Pest is defined in the Food and Agricultural Code as: "*any of the following that is, or is liable to become, dangerous or detrimental to the agricultural or nonagricultural environment of the state: (a) any insect, predatory animal, rodent, nematode, or weed; (b) any form of terrestrial, aquatic, or aerial plant or animal, virus, fungus, bacteria, or other microorganism (except viruses, fungi, bacteria, or other microorganisms on or in living man or other living animals); and (c) anything that the director, by regulation, declares to be a pest.*"

Pesticides include such classifications as: insecticides (used on insects), herbicides (kills plants), fungicides (kills fungi and/or mildew), rodenticides (rodents), bactericides/germicides (used to kill bacteria or germs), and fumigants, etc. It would be very tedious to discuss specific detailed regulations for each of the types of pesticides since they each have numerous products to which exceptions or extra restrictions can apply and may be subject to local conditional or emergency use. Your County Agricultural Commissioner will be able to provide more specific detailed local information. For brevity sake we will discuss the concerns in more general terms.

At the present time there are numerous railways that traverse the San Joaquin Valley. Additionally, the Valley has established Interstate and State freeways, highways, and local roadways which include their respective right-of-ways and are all considered "*transportation corridors.*" Transportation corridors are recognized as a part of the overall environment of the Valley. People use personal, commercial, and/or public vehicles [property] to transport themselves and their goods or commodities [property] utilizing transportation corridors. Regulations already exist relating to pesticide use in or near transportation corridors.

A new railway represents either a new impediment (where none previously existed) to customary agricultural practices or is an augmentation to an already existing transportation corridor footprint. Parcels where the new railway is proposed to be constructed, adjacent and parallel to an established

transportation corridor, creates a wider footprint to an existing corridor that is already subject to the protections prescribed in current pesticide use regulations. Growers adjacent to a widened transportation corridor will be managing their pesticide applications with the same use restrictions that were previously implemented due to their proximity to an existing corridor.

Growers in the path of the railway where the route leaves an established transportation corridor and creates a new corridor across their farmland will be subject to the implementation of existing regulatory restrictions depending on conditions and circumstances of the type of pesticide being used. All that would be “new” to the grower would be the enforcement of existing regulations for conditions that did not exist prior to the construction of the route through their property.

Choices of crops or livestock to produce would be influenced more by forces outside of a high speed train than the train itself. Similarly the choice of what pesticide to use for any particular need should not be influenced by a high speed train any more than already exists for any other transportation corridor in the locality. The expectation of pesticide regulators would be that any pesticide application be made in compliance with all applicable laws, regulations, and conditions.

As to the question about “buffer zones,” their utilization will only be required where such safety protocol is called for when making an application adjacent to a transportation corridor. There are no buffer zones specifically addressing passenger trains; therefore, a passenger train traveling at a high rate of speed does not create a need for a buffer zone different from those already established. What is important to understand about any buffer zone is that for every fifty (50) foot increment that is one-eighth (1/8) of a mile, or 660 feet, in length represents about 0.75 acres not treatable. This is significant to small acreage growers, especially where the railway divides their land.

CONCLUSION

The existence of a high speed train and its right-of-way will not in-and-of itself cause promulgation of new regulations to restrict the use of pesticides in close proximity [adjacent] to a new railway. The only impact will be consequent to the railway footprint causing a “set-back” from its right-of-way due to the need for farm equipment turn-around space and applicable pesticide drift prevention space.

Growers or others in a nonagricultural environment adjacent to the route might realize the implementation of current pesticide use restrictions as a new experience that was not present prior to the establishment of the High Speed Train route.

The answer to the question regarding the HST movement causing air currents that might contribute to drifting a pesticide beyond its target application site is addressed in the paper concerning questions about *wind* created by the train and its effect on the surrounding environment.